

*JUDGE ROBINSON*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

US CV 5850

BRAVO! DEVELOPMENT, INC.

)

Plaintiff,

)

v.

)

BRIO MEDITERRANEAN  
RESTAURANT and  
PAUL SANDOLO

)

Defendants.

)

Civil Action No. \_\_\_\_\_

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Bravo! Development, Inc. ("BDI"), by its undersigned attorneys, as and for its Complaint against defendants Brio Mediterranean Restaurant, and Paul Sandolo, an individual, (collectively "Defendants"), states as follows:

**NATURE OF ACTION**

This action is for infringement of federally registered trademarks in violation of Section 32(1) of the United States Trademark Act, 15 U.S.C. § 1114(1); for use of false designations of origin and false representations, and unfair competition in violation of Section 43(a) of the United States Trademark Act, 15 U.S.C. § 1125(a); for federal trademark dilution in violation of Section 43(a) of the United States Trademark Act, 15 U.S.C. § 1125(c); and for related claims for common law trademark infringement and unfair competition, injury to business reputation and dilution, and deceptive trade practices under New York law.

**THE PARTIES**

1. Plaintiff, Bravo! Development, Inc., is a corporation organized under the laws of the State of Ohio, with its principal place of business at 777 Goodale Avenue, Suite 100, Columbus, Ohio 43212. Plaintiff is in the full-service restaurant business and is the owner and

operator of three restaurant concept chains known as BRIO Tuscan Grille, BRAVO! Cucina Italiana and BON VIE Bistro.

2. Upon information and belief, Defendant, Brio Mediterranean Restaurant is a restaurant located in the State of New York, with its principal place of business at 353 North Bedford Road, Mount Kisco, New York 10549.

3. Upon information and belief, Defendant, Paul Sandolo ("Sandolo"), is an individual residing in this District at 61 Ward Avenue, Mount Kisco, New York 10549.

4. Upon information and belief, Defendant, Sandolo, is the owner of Brio Mediterranean Restaurant located at 353 North Bedford Road, Mount Kisco, New York 10549.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367 as it involves substantial claims arising under the Trademark Laws of the United States together with related claims under New York law.

6. This Court has personal jurisdiction over Defendants, which, upon information and belief, reside in this District, are transacting business in this District and the State of New York, and are committing infringing acts specified herein within this District and the State of New York.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(c) as Defendants reside in this District and/or conduct business in this District and because the wrongful acts alleged herein have been committed in this District.

#### **BACKGROUND**

8. BDI owns and operates sixty-nine (69) full-service restaurants in over twenty (20) states in the United States under three primary restaurant concepts: (a) BRIO Tuscan Grille

(twenty-eight restaurants); (b) BRAVO! Cucina Italiana (forty restaurants); and (c) BON VIE Bistro (one restaurant). The BRIO and BRAVO! restaurant concepts specialize in Italian-style cuisine and are described as casual white-tablecloth and fine casual dining. All three restaurant concepts are open seven days a week for lunch and dinner.

9. BDI created BRIO Tuscan Grille in 1999 in Columbus, Ohio to attract upscale restaurant patrons with authentic northern Italian food (the "BRIO Restaurant" or "BRIO Restaurants"). The creation of the BRIO Restaurants was an overnight success. Today, BDI operates an award winning chain of BRIO Restaurants under the BRIO and BRIO TUSCAN GRILLE trademarks.

10. The BRIO Restaurants are described as fine casual Italian restaurants known for high quality food that target a broad range of guests from business people and young professionals to empty nesters.

11. BDI expanded its BRIO Restaurant chain to twenty-eight (28) total locations, including locations in Birmingham, Alabama; Gilbert, Arizona (opening June 2008); Naples, Florida; Orlando, Florida; Palm Beach Gardens, Florida; Pembroke Pines, Florida; Winter Park, Florida; Atlanta, Georgia (two locations); Lombard, Illinois; Newport, Kentucky; Clinton Township, Michigan; Troy, Michigan; Kansas City, Missouri; Saint Louis, Missouri; Las Vegas, Nevada; Cherry Hill, New Jersey; Charlotte, North Carolina; Beaver Creek, Ohio; Columbus, Ohio (two locations); Lyndhurst, Ohio; Westlake, Ohio; Allen, Texas; Southlake, Texas; The Woodlands, Texas; McClean, Virginia; and Richmond, Virginia.

12. BDI plans to expand the BRAVO! and BRIO restaurant concepts by opening approximately ten (10) new restaurants per year over the next three to five years. In 2008 and

2009, BDI has already announced plans to open another twelve (12) restaurants, including seven (7) BRIO Restaurants and five (5) BRAVO! restaurants.

13. Currently, BDI owns and operates two (2) BRAVO! restaurants in the State of New York located at: One Walden Galleria, Buffalo, New York 14225 and Palisades Mall, West Nyack, New York. At each BRAVO! restaurant, BDI advertises and markets its other restaurant concepts, including the BRIO Restaurants.

14. In accordance with BDI's business plans, BDI has taken steps to expand use of the BRIO trademark into the State of New York.

15. For over twelve (12) years, and since long prior to the acts of Defendants complained of herein, BDI or its predecessor in interest, has used the BRIO trade name and trademark in connection with restaurant services. The BRIO trade name and trademark is exceptionally well-known in the restaurant industry, and BDI has a long-standing reputation for excellence.

16. BRIO has among the highest average unit sales in the industry and was voted the 2007 "Hot Concepts!" winner according to Nation's Restaurant News, the restaurant industry's leading trade publication. A true and correct copy of this award is attached hereto at Exhibit A.

17. In December 2007, BDI received the prestigious 2007 Chain Operator of the Year Award from *Foodservice Equipment & Supplies* for its BRIO and BRAVO! restaurant concepts. A true and correct copy of this award is attached hereto at Exhibit B.

18. In 2007, BDI's BRIO Restaurant located in Naples, Florida was listed as one of The Panel's Picks in the Gulfshore Life 2007 Visitors' Annual, a regional publication. A true and correct copy of The Panel Picks' award is attached hereto at Exhibit C.

19. In 2008, BDI's BRIO Restaurant located in Fort Worth, Texas received a first place Reader's Choice Award for Italian cuisine. A true and correct copy of the award is attached hereto at Exhibit D.

20. Since long prior to the acts of Defendants complained of herein, BDI has extensively promoted its BRIO trade name and trademark in connection with its restaurant services through various means, including its Internet website located at [www.bestitalianusa.com](http://www.bestitalianusa.com) and [www.brioitalian.com](http://www.brioitalian.com) such that its trade name and trademark has become widely known and recognized by the public and the trade. As a result of BDI's substantial investment in developing and promoting the BRIO brand, the BRIO trademark has come to identify and distinguish BDI's products and services sold under that trademark, and represents the enormous goodwill of great value belonging exclusively to BDI.

21. In recognition of its exclusive and extremely valuable rights and goodwill in the BRIO trademark, the BRIO trademark has been registered in the United States Patent and Trademark Office for restaurant services. BDI owns U.S. Registration No. 2,018,983, issued on November 26, 1996, with a date of first use in commerce of August 1, 1995, for the trademark BRIO & Design for "restaurant services" (the "983 Registration"). An image of the '983 Registration appears as follows:



BDI has transitioned from the BRIO & Design trademark in the '983 Registration to the BRIO & Design trademark in the '292 Registration (defined below).

22. BDI also owns U.S. Registration No. 2,996,778, issued on September 20, 2005, with a date of first use in commerce of July 2, 1999, for the trademark BRIO for "restaurant services" (the "778 Registration").

23. BDI also owns U.S. Registration No. 3,191,292, issued January 2, 2007, with a date of first use in commerce of July 2, 1999, for the trademark BRIO tuscan grille & Design for "restaurant services" (the "292 Registration"). An image of the '292 Registration appears as follows:



24. The '778 and '292 Registrations are valid and subsisting, and in full force and effect. BDI is the owner of these registrations and the trademarks shown therein and all of the business and goodwill connected therewith and symbolized thereby. True and correct copies of the '983, '778, and '292 Registrations are attached hereto at Exhibit E.

25. Upon information and belief, Defendants have been operating a restaurant named Brio Mediterranean Restaurant since at least as early as November 2007 at 353 North Bedford Road, Mount Kisco, New York 10549. Upon information and belief, Brio Mediterranean Restaurant offers a menu of Italian-style cuisine and is described as an "upscale, casual, fun restaurant with an adult bar, enough comfort food and also foodie-food."

26. Upon information and belief, Defendants are using the following trademark and logo:



27. Upon information and belief, Defendants own, operate or control the domain name registration located at the URL [www.brioristorante.com](http://www.brioristorante.com).

28. Upon information and belief, Defendant Sandolo has announced plans to work with the chef of Brio Mediterranean Restaurant, Mr. Daniel A. Rubino, Jr., to open an additional restaurant in Fishkill, New York.

29. Given BDI's publicly announced plans to open BRIO Restaurants in the New York market and its senior trademark rights in the trademark BRIO, BDI is entitled to injunctive relief and other remedies against this junior user of the BRIO trademark for restaurant services.

**COUNT ONE**

**INFRINGEMENT OF A FEDERALLY  
REGISTERED TRADEMARK UNDER 15 U.S.C. § 1114(1)**

30. BDI repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 29 above.

31. BDI's use of the BRIO trademark predates any alleged use by Defendants in the United States.

32. Upon information and belief, with full knowledge of the BRIO trade name and trademark, and the tremendously valuable goodwill that BDI has built over the years throughout the United States, and long after BDI's exclusive and continuous use of its BRIO trade name and

trademark, Defendants adopted the trade name BRIO MEDITERRANEAN RESTAURANT for restaurant services.

33. Upon anticipation of plans to open a BRIO Restaurant in the State of New York, counsel for BDI contacted Defendants concerning BDI's superior rights in the BRIO trademarks.

34. On April 25, 2008, BDI, through its counsel, sent a letter to Defendants and Chef, Daniel A. Rubino, Jr. at Brio Mediterranean Restaurant, 353 North Bedford Road, Mount Kisco, New York 10549, demanding that it cease its infringement, unfair competition and dilution of BDI's well-known BRIO trade name and trademark. A true and correct copy of the April 25, 2008 letter is attached hereto at Exhibit F. BDI, through its counsel, obtained confirmation that the letter was delivered on April 26, 2008. The receipt was signed by "M. Jensen" on April 26, 2008. A true and correct copy of the signed FedEx Express receipt is attached hereto at Exhibit G.

35. After receiving no response from Defendants, on May 12, 2008, BDI, through its counsel, again wrote to Defendants repeating the demand that the infringement of the trade name and trademark BRIO cease. A true and correct copy of the May 12, 2008 letter is attached hereto at Exhibit H. BDI, through its counsel, obtained a certified mail receipt showing that this letter was delivered on May 12, 2008. A true and correct copy of the certified mail receipt postcard is attached hereto at Exhibit I.

36. To date, neither BDI nor its counsel have received a response from the Defendants to BDI's letters of April 25, 2008 and May 12, 2008.

37. Upon information and belief, despite having knowledge of BDI's rights in its BRIO trade name and trademark, Defendants adopted and used the trademark BRIO in connection with Defendants' restaurant services. Upon information and belief, Defendants' use

of the trademark BRIO was commenced and has continued in willful violation of BDI's rights in the BRIO trade name and trademark.

38. BDI has never authorized, licensed or otherwise condoned or consented to Defendants' use of the BRIO trademark.

39. Upon information and belief, Defendants' restaurant services are marketed and sold to the same class of customers and end-users as the products and services of BDI.

40. Defendants' use and threatened continued use of the trade name and trademark BRIO is likely to cause confusion, to cause mistake, and to deceive as to the source, origin, or sponsorship of Defendants' restaurant services and to cause the public wrongly to associate the trade name and trademark BRIO with the Defendants and to believe that Defendants are somehow affiliated or connected with, or licensed, sponsored, or approved by BDI.

41. Defendants' use and threatened continued use of the trade name and trademark BRIO constitutes the use of a false designation of origin and false representation of Defendants' restaurant services.

42. Defendants' use and threatened continued use of the trade name and trademark BRIO is likely to cause BDI to lose the ability to control its reputation and image among the public.

43. Defendants' use and threatened continued use of the trade name and trademark BRIO is likely to gain acceptance for Defendants' restaurant services by trading on the merit, reputation, and goodwill built up by BDI's extensive use, advertising, and marketing of products and services under the BRIO trade name and trademark.

44. Defendants' use and threatened continued use of the trade name and trademark BRIO has been with full knowledge of BDI's prior rights and with intent to confuse consumers and to benefit from the goodwill of BDI's products and services.

45. The aforesaid acts of Defendants, constitute willful and intentional infringement of BDI's federally registered trademarks in violation of Section 32(1) of the United States Trademark Act, 15 U.S.C. § 1114(1).

46. Defendants' aforesaid acts have caused and, unless restrained by this Court, will continue to cause great and irreparable injury to BDI, for which it has no adequate remedy at law.

47. As the result of Defendants' unlawful actions, BDI has suffered damages in an amount that exceeds Ten Million Dollars (\$10 Million) and such damages will be proved at trial. BDI is entitled to compensation in this amount, plus punitive damages for the knowing and willful actions of Defendants.

**COUNT TWO**

**FALSE DESIGNATIONS OF ORIGIN AND FALSE  
REPRESENTATIONS, AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(A)**

48. BDI repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 47 above.

49. Defendants' aforesaid acts constitute willful and intentional use of false designations of origin and false representations, and unfair competition in violation of Section 43(a) of the United States Trademark Act, 15 U.S.C. § 1125(a).

50. BDI has never authorized, licensed or otherwise condoned or consented to Defendants' use of the BRIO trademark.

51. Defendants' aforesaid acts have caused and, unless restrained by this Court, will continue to cause great and irreparable injury to BDI, for which it has no adequate remedy at law.

52. As the result of Defendants' unlawful actions, BDI has suffered damages in an amount that exceeds Ten Million Dollars (\$10 Million) and such damages will be proved at trial. BDI is entitled to compensation in this amount, plus punitive damages for the knowing and willful actions of Defendants.

**COUNT THREE**

**FEDERAL DILUTION UNDER 15 U.S.C. § 1125(C)**

53. BDI repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 52 above.

54. Defendants' aforesaid acts constitute willful and intentional dilution of the distinctive quality of, and tremendous goodwill associated with BDI's famous trade name and trademark in violation of Section 43(c) of the United States Trademark Act, 15 U.S.C. § 1125(c).

55. Defendants' aforesaid acts have resulted in actual dilution of BDI's famous trade name and trademark.

56. Defendants' aforesaid acts have caused and, unless restrained by this Court, will continue to cause great and irreparable injury to BDI, for which it has no adequate remedy at law.

57. As the result of Defendants' unlawful actions, BDI has suffered damages in an amount that exceeds Ten Million Dollars (\$10 Million) and such damages will be proved at trial. BDI is entitled to compensation in this amount, plus punitive damages for the knowing and willful actions of Defendants.

**COUNT FOUR**

**TRADEMARK INFRINGEMENT AND UNFAIR  
COMPETITION UNDER NEW YORK LAW**

58. BDI repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 57 above.

59. Defendants' aforesaid acts constitute willful and intentional trademark infringement and unfair competition under the common law of the State of New York.

60. Defendants' aforesaid acts have caused and, unless restrained by this Court, will continue to cause great and irreparable injury to BDI, for which it has no adequate remedy at law.

61. As the result of Defendants' unlawful actions, BDI has suffered damages in an amount that exceeds Ten Million Dollars (\$10 Million) and such damages will be proved at trial. BDI is entitled to compensation in this amount, plus punitive damages for the knowing and willful actions of Defendants.

**COUNT FIVE**

**INJURY TO BUSINESS REPUTATION  
AND DILUTION UNDER NEW YORK LAW**

62. BDI repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 61 above.

63. Defendants' aforesaid acts are likely to injure the business reputation of BDI and dilute the distinctive quality of the BRIO trade name and trademark in violation of N.Y. Gen. Bus. Law § 360-1.

64. Defendants' aforesaid acts have caused and, unless restrained by this Court, will continue to cause great and irreparable injury to BDI, for which it has no adequate remedy at law.

65. As the result of Defendants' unlawful actions, BDI has suffered damages in an amount that exceeds Ten Million Dollars (\$10 Million) and such damages will be proved at trial. BDI is entitled to compensation in this amount, plus punitive damages for the knowing and willful actions of Defendants.

#### **COUNT SIX**

##### **DECEPTIVE TRADE PRACTICES UNDER NEW YORK LAW**

66. BDI repeats and realleges, as if fully set forth herein, the allegations contained in paragraphs 1 through 65 above.

67. Defendants' aforesaid acts constitute deceptive trade practices in violation of N.Y. Gen. Bus. Law § 349.

68. Defendants' aforesaid acts have caused and, unless restrained by this Court, will continue to cause great and irreparable injury to BDI, for which it has no adequate remedy at law.

69. As the result of Defendants' unlawful actions, BDI has suffered damages in an amount that exceeds Ten Million Dollars (\$10 Million) and such damages will be proved at trial. BDI is entitled to compensation in this amount, plus punitive damages for the knowing and willful actions of Defendants.

#### **PRAYER FOR RELIEF**

WHEREFORE, BDI prays that the Court:

1. declare, adjudge and decree that Defendants' aforesaid acts constitute infringement of BDI's federally registered trademarks in violation of 15 U.S.C. § 1114; use of false designations of origin and false representations, and unfair competition in violation of 15 U.S.C. § 1125(a); federal dilution in violation of 15 U.S.C. § 1125(c); trademark infringement and unfair competition in violation of the common law of the State of New York; injury to BDI's

business reputation and dilution in violation of N.Y. Gen. Bus. Law § 360-1; and deceptive trade practices under N.Y. Gen. Bus. Law § 349;

2. grant preliminary and permanent injunctions restraining Defendants, and their officers, directors, agents, servants, employees, attorneys and those persons in active concert or participation or otherwise in privity with them from engaging in further acts constituting trademark infringement, false designations of origin and false representations, and unfair competition, injury to business reputation and dilution, and deceptive trade practices, including the use and registration of the trade name and trademark BRIO alone or in connection with other terms or a trade name or trademark incorporating the term "BRIO";

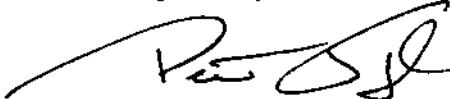
3. order that Defendants assign the domain name registration for www.brioristorante.com to Plaintiff;

4. order that Defendants file with the Court and serve upon BDI within thirty (30) days after service upon Defendants of this Court's injunction issued in this action, a written report, signed under oath, setting forth in detail the manner in which Defendants have complied with such injunction, including confirmation that Defendants are not using in any manner the trade name and trademark BRIO alone or in connection with other terms, or a trade name or trademark incorporating the term "BRIO";

5. order that Defendants account to BDI for, and that BDI be awarded Defendants' profits from sales of its services advertised, promoted, marketed, sold, offered for sale, or provided under the trade name and trademark BRIO, together with such increased sum in addition thereto as the Court shall find just in view of the willful and intentional nature of Defendants' infringing and tortious acts;

6. award BDI its damages arising out of Defendants' infringing and tortious acts, together with an amount which is three times the amount found as actual damages;
7. award BDI its costs, disbursements and reasonable attorneys' fees incurred in bringing this action;
8. award BDI punitive damages to the extent permitted by law;
9. award BDI compensation in an amount that exceeds Ten Million Dollars (\$10 Million), plus punitive damages for the knowing and willful unlawful actions of Defendants as BDI has suffered damages in this amount and such damages will be proved at trial; and
10. award BDI such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Dated: New York, New York  
June 27, 2008

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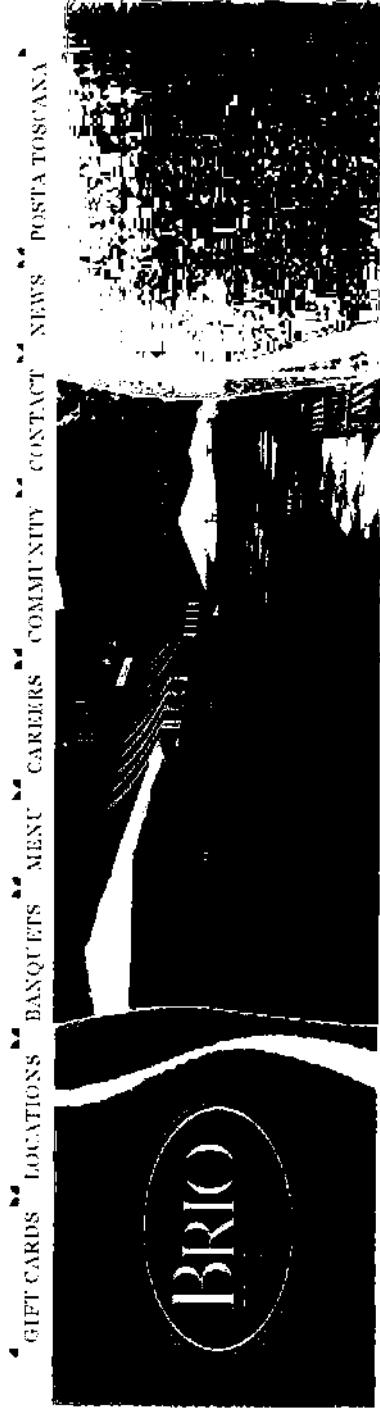
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Attorneys for Plaintiff  
Bravo! Development, Inc.

# **Exhibit A**



[GIFT CARDS](#) [LOCATIONS](#) [BANQUETS](#) [MENU](#) [CAREERS](#) [COMMUNITY](#) [CONTACT](#) [NEWS](#) [POSTA TOSCANA](#)



#### MENU:

Lunch and Dinner Daily.  
Bellini Brunch Menu.  
Sat. & Sun. 11am - 3pm

#### HOURS OF OPERATION:

Sun-Thurs. 11am - 10pm  
Fri. & Sat. 11am - 11pm

#### LOCATION(S):

Atlanta (2), Birmingham,  
Charlotte, Cherry Hill,  
Cleveland (12), Columbus (2),  
Dallas (2-Southlake, Allen),  
Dayton, Detroit (2-Troy,  
Clinton Township), Gilbert,  
Houston, Kansas City, Las  
Vegas, Lombard, Lone Tree,  
Naples, Newport, Orlando  
(2), Palm Beach, Pembroke  
Pines, Richmond, St. Louis,  
Washington D.C. (McLean)

#### PHONE:

Call 868-45-BRAVO for  
location nearest you.

#### RESERVATIONS:

Reduce your wait with limited  
reservations.

#### CARRYOUT:

Available 7 days a week for  
lunch & dinner.

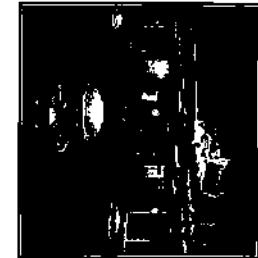
#### OUTDOOR DINING:

Enjoy dining on our Italian  
terrace.

## Welcome to Brio!

Brio brings the pleasures of the Tuscan country villa to the American city. The Italians built their spacious country villas to escape the pressures of urban life and enjoy "La Dolce Vita" (the good life). They would mingle with family and friends and eat freshly prepared food from their grounds while surrounded by natural beauty. In just this manner, Brio offers its guests "La Dolce Vita."

The food at Brio is all simply prepared using the finest and freshest ingredients. The menu emphasis is on prime steaks and chops, homemade pasta specialties, and flatbreads prepared in an authentic Italian wood-burning oven. Brio's villa-like interior features arched



## Change is in the Air!

[View Brio's SUMMER MENU](#)

## 2008 BRIO OPENINGS

**June 2008**  
Gilbert, AZ - San Tan Village

**July 2008**  
Denver, Park Meadows, CO

## 2009 BRIO OPENINGS

**style terraces.**  
**Venetian plaster walls and marble countertops.**

**PRIVATE DINING:**  
 For groups large and small.  
 Capacity varies by location.  
 Contact location for more information.

**FORMS OF PAYMENT:**  
 Visa, MC, AmEx, Discover

**PARKING INFO:**  
 On site parking; some locations valet parking available.



"To Eat Well, Is To Live Well!"

Brio Gift Cards  
 Make the Perfect Gift!

**Winter 2009**  
 Westfarms - Hartford, CT  
 Scottsdale Crossing, AZ

**Spring 2009**  
 Crabtree - Raleigh, NC  
 Indianapolis, MD

**Summer 2009**  
 Cherry Creek - Denver, CO  
 Tampa International - Tampa, FL

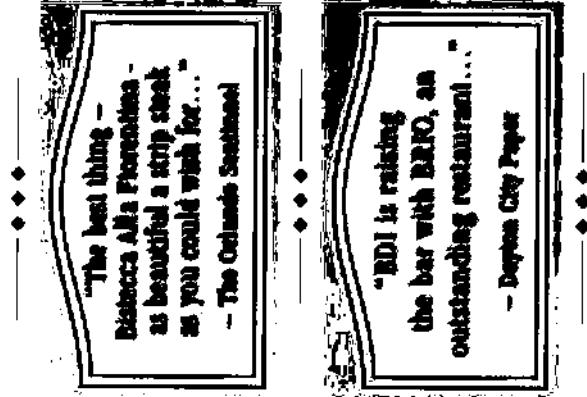
**Fall 2009**

**BRIO Invite**  
 Would you like an invitation to one of our upcoming openings and live in the area? If so, please fill out the form below:

Name: _____	Address: _____
City: _____	State: _____
Zip Code: _____	Email: _____
Location: _____	
<b>Select a Location:</b> <input type="button" value="▼"/>	
If a new Brio near you is not on the list, it is already open for business. Can we contact you about future events & promotions?	
<input checked="" type="radio"/> Yes <input type="radio"/> No	
<b>Submit</b> <input type="button" value="◆ ◆ ◆"/>	

Register Your Gift Card!  
[Click here to register your Brio Gift Card!](#)

If you already have a registered card with us, then you can link additional cards to your current registration. Simply log in and click on "Attach Another Card".



[Gift Cards](#) | [Locations](#) | [Banquets](#) | [Menu](#) | [Careers](#)  
[Community](#) | [Contact](#) | [News](#) | [Posta Toscana](#)  
[Privacy Policy](#)

# **Exhibit B**

Foodservice  
equipment & supplies.

Reed Business Information

2007  
**Chain Operator  
of the Year**

**BRIO**  
tuscan grille

**BRAVO!**  
CUCINA ITALIANA

RENEW  
Get FREE magazine  
com/renew

START  
Get FREE e-newsletter  
info@fesmag.com

[www.fesmag.com](http://www.fesmag.com)

# 2007 Chain Operator

## Bravo Cucina Italiana and Brio Tuscan Grille

A steady and sustainable growth plan that focuses on adding units and increasing same-store sales has these two BDI-owned concepts on the precipice of bigger things.

**T**ake a look around. How often do you see an Italian restaurant that's not a mom-and-pop or a super high-end restaurant? How often do you come across an Italian chain that's somewhere in between? Until recently, your answer would most likely be, "not very often." Despite being around for the last decade, just in the past year it seems that Columbus, Ohio-based Bravo Development Inc.'s expansion efforts for two of its concepts, Brio Tuscan Grille and Bravo Cucina Italiana, have begun to take noticeable shape, bursting into the "polished casual" scene. That means that although Brio and Bravo both pay homage to the informal but modern atmosphere, timely service and reasonable prices on which many casual, full-service chain restaurants capitalize, they have also bumped everything up a notch. While many consider Brio to be slightly "dressier" and Bravo to be more family- and neighborhood-oriented, both are equally known for their higher quality food, thanks to better ingredients and executive chefs in each restaurant, plus upscale décor, and bar areas where guests linger.

It's pretty clear what's happening. About two years ago, BDI recruited Saeed Mohseni, then the chief executive officer of McCormick & Schmick's, to serve in the same role at BDI, although Mohseni was already on BDI's board of directors. One could say Mohseni has done for polished casual, Italian concepts what he's done with McCormick &



By Amelia Levin, Associate Editor

Schmick's in the polished casual seafood arena. In short, he's virtually created a whole new segment. Mohseni's job when he came to BDI was to help enhance the Brio and Bravo images, and rev up the expansion engines. Not only has he done that, but to put the concepts' success into perspective, they brought in a combined

\$240 million in sales last year. Bravo increased its sales from \$115 million in 2005 to \$130 in 2006. Brio went from \$83.2 million in sales for 2005 to \$110 million in sales for 2006. Both concepts were able to accomplish these high sales growths with an expansion of just four units each. And what's more, both concepts appear to be in a position to sustain or accelerate their growth in the years to come.

These reasons, and others make it clear why *Foodservice Equipment & Supplies* chose BDI's Bravo Cucina Italiana and Brio Tuscan Grille as co-Chain Operators of the Year.

### The Softer Side

Since opening its first location in 1992, Bravo has grown to 37 units scattered throughout the Midwest and East Coast. Seven years later, Brio opened its first unit and now operates 25 locations. In a departure from the past decade, Mohseni says he plans to open 10 total Brio and Bravo units each year for the next three to five years, some of which will debut in western states, including Arizona, New Mexico and Nevada (Las Vegas). While it seems as if Brio and Bravo could expand even faster, Mohseni's reluctant to do so. "We stay very disciplined in terms of the number of restaurants we have," he says. "This business is about human resources, not real estate and not finance. We're looking for a quality group of people rather than high multi-unit numbers. You cannot develop the human resource faster than you can develop sites."

The "human element" behind these two BDI concepts certainly sets them apart from many chains out there. Team members are strongly encouraged to move up through the

Both Brio and Bravo (pictured here) capitalizes on their open kitchens as a way to keep guests excited during their dining experience while emphasizing the freshness and culinary sophistication of the food. The majority of the key cooking equipment sits lower than eye level so that guests focus on the cooks at work and the decorative tiling. The wood-fired ovens that cook the flatbreads also serve as a point of visual interest.





This Brio Cucina Italiana in Albuquerque, N.M., like all locations, features an elaborate bar area with granite and dark wood, a good amount of seating space and frosted glass that separates this space from the dining room.

ranks to become managers, sous chefs and executive chefs, Mohseni says. A typical unit consists of an executive chef, two sous chefs, three assistant managers and 90 to 100 team members. The company created its Rising Star program about four years ago to train its employees in their positions as well as in assisting with store openings. Collectively, this gives employees the educational foundation necessary to function as a manager in a multi-unit environment or as a sous or even executive chef. At the same time, Mohseni says, BDI "constantly looks for great talent from the outside that can add more depth to our team."

#### **Creating an Environment**

While Mohseni rates its importance second to human resources, real estate still plays a central role in BDI's growth plans. This is particularly the case for Brio Tuscan Grille, a destination dining place that attaches to shopping malls and lifestyle centers in an effort to attract women of all ages. "Sixty-three percent of guests who visit Brio are female," Mohseni says. "Brio is definitely a place where women can get together for lunch with friends and relax in between shopping."

Brio Tuscan Grille presents a slightly dressier, more upscale décor than its sister restaurant, Brio. Elements contributing to the presentation include light-colored walls spattered with paintings of Italian scenes, a granite-topped bar, and lots of light fixtures and white drapery throughout the dining space.

As a result, Brio's elaborate outdoor patios help create an environment that appeals to its target audience. "There's a tremendous amount of focus put on open space not only in the inside dining room at Brio, but also on the outdoor area to capitalize on seasonality," Mohseni says. Even at colder, Midwest locations, the Brio patio stays open longer thanks to tents and heaters.

Brio restaurants, on the other hand, generally take shape as freestanding units in high-density, residential areas, many of them affluent and nearby major cities. This helps attract





Cooks at the Brio Tuscan Grille add toppings and prepare large wood slabs where the wood-fired pizza will get sliced and presented to the table. A long, brass hood maintains the aesthetics of the kitchen in addition to performing its necessary functions, while modern, warm-colored light fixtures add brightness to the kitchen.

families and position the concept as a more casual, neighborhood place for enjoying a nice meal. "Where going to Brio might be a special occasion, Bravo is a local option where you take your family out to eat," Mohseni says.

The hallmark of both restaurants, Mohseni says, is the open, exhibition kitchen. "We feel that the open kitchen reinforces the freshness of our food and offers a certain showmanship. Dining is as much about eating as it is about attending a show."



our company philosophy. We're more focused on getting our guests to visit more than three times in one month rather than on the prices alone."

#### Belly Up to the Bar

For both restaurants, however, expanding the bar has been a central focus. Just a couple of months ago, BDI announced plans to expand its

## BRIO Tuscan Grille

**T**he upscale factor at Brio begins even before a guest walks in the door. The sheer size of real estate the store consumes, coupled with elaborate settings and stonework, and sometimes large white pillars. Inside, cream-colored walls and accents of gold, copper and brass are woven throughout the space. "We're very proud to live with our name, Brio, which means 'brave' in Italian," says Brio Concepts President Brian O'Malley. "We're trying to create that Tuscan-eat look and an atmosphere that's loud and open," he says.

At about 52 tables seating roughly 230 guests per shift, the average Brio will see about 4,000 to 5,000 guests per week. Outside on the terrace, an important part of Brio, seats can range from 15 to as many as 45, O'Malley says.

"We want Brio to be upscale, but very friendly. At any one time, we can have a family of one table, the president of the local bank of the next, and 'ladies night' of executives."

The drama continues with the exposed kitchen, where cooks can be seen preparing pizzas, grilling steaks and fixing salads, but all the major cooking sits below eye-level.

BDI's Chief Culinary Officer Philip Yudkin, who oversees the menu and culinary operations of both Brio and Bravo concepts, says, "We want to showcase the merits and the size along the back wall and the wood-fired oven, rather than a bunch of stainless steel. Rather than being more industrial-

and looking, we wanted the kitchen to be more welcoming."

Some Brio locations have counter-top seating along the kitchen line to add to the entertainment. From left to right, an upright beer tap and Dutch oven for souping make up the grill station. Next is that set a convection oven for breads and some entrees, and the sand station that consists of a T2-burner range with two ovens underneath. A pasta station next to that also has a T2-burner range with refrigerated drawers underneath. A wood-fired oven makes up the pizza station, followed by the pantry where staff prepare salads and desserts.

"We strive to use the most authentic Italian ingredients we can," Yudkin says. That means lots of travel to the home country and seeking out the freshest, most seasonal products available.

"Instead of smaller shrimps, we'll use prime shrimp. Instead of olive oil, we'll use extra virgin olive oil. These are little details that maybe the guests don't notice individually, but when combined together they will say, 'Wow, this is really good!'"

At Brio, the menu focuses on meat-heavy dishes like prime grilled steaks, parmesan-crusted lamb chops, and wood-grilled salmon. Pastas include the popular chicken fettuccine pomodoro, a crusty breaded chicken breast atop barley needles in a light tomato-red wine sauce, as the richer lasagna Bolognese. At lunch, packed-down soups and pastas, antipasto salads, and flatbread rolls.

■ 2006 Annual Sales \$140 million

■ 2005 Annual Sales \$83.2 million

■ Current Number of Units: 25

■ 2006 Number of Units: 20

■ Locations: Alabama, Florida, Georgia, Indiana, Michigan, Missouri, New Jersey, North Carolina, Ohio, Texas and Virginia. Areas where restaurants will open soon include Arizona, Nevada and New Mexico.

■ Menu and Atmosphere: Tuscan-style grilled steaks, chops and other meat dishes, plus pasta, flatbreads and horseshoes. Bright,

more upscale interior with a distinguishable bar and seating area with plush chairs and a fireplace.

■ Average Per-Person Check: \$23

■ Target Customers:

Women, all ages, higher-income individuals

■ Real Estate: Attached to shopping malls, lifestyle centers, specialty outdoor parks

■ Business Dayparts:

Lunch, dinner, after-work, later dinners

■ Equipment Dealer:

The Wholesalers Co., Columbus, Ohio

## Chain Operator of the Year

bar program significantly in 2008. "We believe that both Brio and Bravo, being more upscale, affordable dining places, have had an opportunity to capture bar sales based on where we're located and what we would consider an after-work or late-night place for people to gather," Mohseni says.

Both concepts have always served wine and offered a full-bar, with an emphasis on specialty cocktails and martinis at Brio, but that will serve as just the cornerstone for what comes next. "We're adding tap beers to our bars, and will focus on our martini nights," Mohseni says. Instead of discounting drinks to attract guests, he says, both concepts will instead offer a specific bar-food menu with tailored-down dining menu items perfect for sharing such as flatbreads, bruschetta, calamari and other appetizers. Currently, bar sales at Brio rake in about 22 percent of total unit revenues, a significant amount.

"Our bar area has always been an integral part of our entire design," Mohseni says. The long, dark wood bars, surrounded by small tables and a comfortable seating area with plush, leather couches, sofas and a fireplace are typically the first thing customers see when they walk in the door. "The soft seating area clearly creates a comfortable environment for people to gather," Mohseni says.

### Change Is Good

It's one thing to attract a more sophisticated crowd and another to be able to keep them coming back on a regular basis. "The average consumer might like something today, but five years later, their palettes may change, so our kitchen needs to be flexible enough to handle that," Mohseni says.

At Bravo, the menu changes three times a year and at Brio, two times,



The outdoor grill at Brio Tuscan Grille represents an important medium for attracting and retaining the concept's target female customers and other patrons looking to enjoy a relaxing lunch in between shopping, grab some after-work drinks and appetizers, or enjoy an evening meal. Thanks to portable heaters and tents, the patio stays open during more months of the year even in areas with colder weather.

although chefs from both restaurants constantly evaluate all items. "We're one of the dying breeds of restaurants that work with executive chefs rather than kitchen managers," Mohseni says. "This helps us put a greater emphasis on quality and execution, and it certainly allows us a greater opportunity to experiment with different ingredients and flavors."

Adapting the menu is just part of BDI's philosophy, Mohseni says. "As part of running any business you have to constantly grow, change, evaluate and modify," he says. "Our architectural design has evolved over time. So has our food program. And now our bar program. As any good organization, we make every effort to improve our operations so we don't wake up one day and say, 'We really missed the boat, we have to reinvent ourselves.'"

FEB



**W**hile Bravo's exterior resembles Brio's, inside, the decor consists of darker woods and white tablecloths. "Everything has a more rustic finish so it's a little less high-end, less dramatic than Brio," says Michael Meher, Bravo concept president.

The same goes for the menu, characterized by less meat dishes and more pasta and souped-up items, but still including high-end ingredients such as imported, buffalo mozzarella and imported Parmesan goat cheese for the wild mushroom brochettes. Seafood items span the menu as well, from lobster and shrimp scallopini to wood-grilled tilapia with crab.

Bromo changes its menu seasonally, but also to introduce special dishes from different regions in Italy. "Last year, we focused on Sicily and this year, we took a trip to northern Italy where there are stronger flavors like prosciutto, ragu, osso buco, risotto, and stronger green produce," Meher says.

Meher's restaurants features private dining rooms, and generally speaking the main dining room can seat up to 260 guests; Meher says. In total, the concept has 25 to 30 back-of-the-house staff

members and 16 to 25 servers cover the floor on a given night. The team usually has around 50 seats depending on the location, he says. On busy nights, Brio will do around 1,200 meals, and 600 on slower nights. During busy lunches, the restaurant will see 400 transactions and 200 during slower ones, according to Vendolino.

The kitchens at Brio almost exactly mirrors that of Brio, although it doesn't have an oven station because of fewer meat dishes on the menu, Vendolino says.

Both Brio and Bravo kitchens, he says, generally span about 2,000-square-feet. Brio's back of the house consists of prep tables; two convection double-deck ovens for roasting chickens and baking breads; a walk-in cooler; and a smaller walk-in freezer just used for cheesecakes, pre-baked dough and some other desserts.

When purchasing equipment, Vendolino says, it's important for both Brio and Bravo to have extremely durable, high-end pieces to handle their volume, to hold temperatures at safe levels for a consistent product. "We also deal with a situation where all of our equipment hangs against the back wall as we need compressors and other electrical parts that are positioned out in the front,"

atmosphere, but slightly more upscale with white tablecloths and a nice bar area with seating. Menu focuses on pastas, flatbreads and some meat entrees.

■ **Average Per-Person Checks \$18**

■ **Target Customer Females**

■ **Real Estates Free-standing units in high-density residential areas outside cities**

■ **Business Dayparts Brunch, business luncheons**

■ **Equipment Suppliers**

The Wisconsin Co., Columbus, Ohio

Vendolino says, "It's a little more expensive up front, but it's worth it in the long run."

As for food safety, all managers must receive ServSafe certification and all staff members undergo rigid training. "We also complete line checks, check temperatures off the time, check the food that comes in, wash all our vegetables, use gloves and color-coded chopping boards, enforce handwashing, the whole nine yards," Vendolino says. To maintain consistency, many products, both at Brio and Bravo, get portioned prior to service, or during it on the line.

Bromo differs from Brio in that it has a rideable take-out program to compete with other casual chains, Meher says. "This is a huge part of our growth," he says. "We have a very strong and loyal guest base, but if we can get another visit out of them because of the convenience of our rideable-to-go program, that's extra business for us." At the moment, to-go sales account for 6 percent of total restaurant sales per unit, "which is very good for us considering when we started this program 18 to 24 months ago, we were in that 2.5-percent range," Meher says.

## **Exhibit C**

**Shab Shab** (arabic) 123rd  
847 Vanderbilt Beach Road,  
Naples, (239) 594-5557  
Style: Persian  
Executive chef: Michael Mir  
Try this! Clay pot lamb shank  
Entrées: \$20 to \$26

**Le Provençal**  
1234 Eighth St. S., Naples,  
(239) 261-8239  
Style: French Mediterranean  
Executive chef: Isabelle Carlot  
Try this! Grouper à la Provencal  
Entrées: \$22 to \$40

**Blue Water Bistro**  
Coconut Point Mall, Estero,  
(239) 949-2583  
Style: Seafood and steaks  
Executive chef: Chris Metzler  
Try this! Seared tuna  
Entrées: \$13 to \$30

**Catch Up's**  
In Waterside Shops, Naples,  
(239) 596-9112  
Style: American  
Try this! Seared beef  
tenderloin flatbread  
Entrées: \$12 to \$29

**Dito Tiziano Cucina**  
In Waterside Shops, Naples,  
(239) 593-5219  
Style: Italian

**Executive chef:** Joseph Toller  
**Try this!** Lasagna Al Forno  
**Entrées:** \$12 to \$29

**Campiello Ristorante & Bar**  
1177 Third St. S., Naples,  
(239) 435-1166  
Style: Northern Italian  
Executive chef:  
Salvatore Conigliaro  
Try this! Combazione  
Di Pesce, fresh seafood  
in marinara over linguine  
Entrées: \$18 to \$40

**Chops City Grill**  
837 Fifth Ave. S., Naples,  
(239) 262-4677; 8200 Health  
Center Blvd., Suite 100, Bonita  
Springs, (239) 992-4677  
Style: Steak, seafood and sushi  
Executive chefs: Josh Grita and  
Chris Metzler in Naples; Brian  
Grim in Bonita Springs  
Try this! Spiced yellowfin tuna  
Entrées: \$15 to \$30

**Ci Cibi Mediterranean  
Bar & Grill**  
13451 McGregor Blvd., Fort  
Myers, (239) 415-2007  
Style: Mediterranean  
Executive chef: Scott Sopher  
Try this! Grilled chorizo stuffed  
calamari  
Entrées: \$20 to \$30

**Côte d'Azur Restaurant**, left  
11224 Tamiami Trail N., Naples,  
(239) 597-8867  
Style: Classic Provençal  
Executive chef:  
Claudio Scaduto  
Try this! Sea scallops  
Entrées: \$27 to \$49

**Fleming's**  
8985 Tamiami Trail N., Naples,  
(239) 598-2424  
Style: Steak house and wine bar  
Executive chef: David Gossett  
Try this! Prime hand-cut steaks  
Entrées: around \$28

**Giovanni's Italiano**  
Restaurant

5975 Pine Ridge Road,  
Naples, (239) 353-9440  
Style: Italian  
Executive chef:  
Salvatore Conigliaro  
Try this! Combazione  
Di Pesce, fresh seafood  
in marinara over linguine  
Entrées: \$15 to \$30

**Handsome Harry's**  
1205 Third St. S., Naples,  
(239) 434-6400  
Style: American  
Executive chef: Kouri Killmeier  
Try this! 24-ounce strip steak  
Entrées: \$18 to \$48

**Keylime Bistro**  
11509 Andy Rose Lane,  
Captiva, (239) 395-4000  
Style: Seafood and pasta  
Executive chef: Jose Martinez  
Try this! Stuffed grouper  
Entrées: \$12 to \$32

**Mario-Michelle's Restaurant  
on the Bay**  
The Village at Venetian Bay,  
4236 Gulf Shore Blvd. N.,  
Naples, (239) 263-0900  
Style: French  
Executive chef: Kila Hughes  
Try this! Bouillabaisse "Du Gulf"  
au Pernod  
Entrées: \$22 to \$36

**Patio 33**  
33 Patio de Leon, between First  
and Main streets, Fort Myers,  
(239) 337-2846  
Style: Internationally flavored  
rotisserie cooking  
Executive chef: Denis Meurgue  
Try this! Leg of lamb in garlic  
sauce  
Entrées: \$20 and up

**Reved Italia**, right, above  
853 Fifth Ave. S., Naples,  
(239) 434-8494  
Style: Italian

**Try this!** Pork  
osso buco with grilled  
vegetable risotto  
Entrées: \$15 to \$25

**Roy's**  
In Bayfront, Naples, (239)  
261-1416; in the Promenade at  
Bonita Bay, Bonita Springs,  
(239) 498-7697  
Style: Hawaiian fusion cuisine  
Executive chef: Brandon  
Iacone in Naples; Wade Lowe in  
Bonita Springs  
Try this! Misoyaki butterfish  
with Kim Chee lime infusion  
Entrées: around \$25

**Sushi Circle Double Boiler**  
In Coastland Center, Naples;  
Coconut Point, Estero  
Style: Steak house  
Executive chef: Jim Cannon  
Try this! Porterhouse for two  
Entrées: \$20 to \$30

**Sunshine Seafood Café**  
8750 Gladiolus at Winkler,  
Fort Myers, (239) 489-2233  
Style: Fresh seafood  
Executive chef: Doroteo Diaz  
Try this! Red snapper picatta  
Entrées: \$15 to \$25

**Vibba Island Grill**  
711 Fifth Ave. S., Naples,  
(239) 262-5787  
Style: Island style with  
Caribbean grill  
Executive chef: Josh Todd  
Try this! Plantain and macadamia-enriched black grouper  
Entrées: \$18 to \$30

*Additional reporting by Nisha  
Barlow and Rebecca Loveridge*

## **Exhibit D**

JUL-16-2004 21:15 From:SOUTHLAKE

## CHOICE AWARDS

MARCH 27, 2008

14

**food & drink****BREAKFAST**

**First Place:** I-Hop  
**Second Place:** Mimi's Café

**ORIENTAL**

**First Place:** PF Changs  
**Second Place:** Sushi Sam

**LUNCH**

**First Place:** Café Express  
**Second Place:** Baker Bros

**SEAFOOD**

**First Place:** Trulucks  
**Second Place:** Papadeauxs

**PIZZA**

**First Place:** iFratelli's  
**Second Place:** Palios

**STEAKHOUSE**

**First Place:** Bob's Steak & Chop House  
**Second Place:** Kirby's

**BBQ**

**First Place:** Feedstore Bar-B-Q  
**Second Place:** Red, Hot & Blue

**Deli**

**First Place:** McAlister's  
**Second Place:** Jason's Deli

**ITALIAN**

**First Place:** Brio Tuscan Grille  
**Second Place:** Café Italia

Tom, Reader Choice Awards for All of Tarrant County  
 (Foothills)  
 ASK Powell

## **Exhibit E**

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,018,983

United States Patent and Trademark Office

Registered Nov. 26, 1996

SERVICE MARK  
PRINCIPAL REGISTER



1112 WEST LLC (TEXAS LIMITED LIABILITY  
COMPANY)  
1112 WEST 6TH ST.  
AUSTIN, TX 78703

FOR: RESTAURANT SERVICES, IN CLASS  
42 (U.S. CLS. 100 AND 101).  
FIRST USE 8-1-1995; IN COMMERCE  
8-1-1995.

"Brio" IS OF ITALIAN ORIGINS WITH THE  
FOLLOWING MEANING "VIGOR", "VIVA-  
CIOUS" OR "WITH VITALITY".

SER. NO. 74-725,916, FILED 9-7-1995.

ANNE L. CORNELIUS, EXAMINING ATTOR-  
NEY

**Int. Cl.: 43**

**Prior U.S. Cls.: 100 and 101**

**United States Patent and Trademark Office**

**Reg. No. 2,996,778**

**Registered Sep. 20, 2005**

**SERVICE MARK  
PRINCIPAL REGISTER**

**BRIO**

BRAVO DEVELOPMENT, INC. (OHIO CORPORATION)  
18 N. MAIN STREET  
CHAGRIN FALLS, OH 44022

FOR: RESTAURANT SERVICES, IN CLASS 43  
(U.S. CLS. 100 AND 101).

FIRST USE 7-2-1999; IN COMMERCE 7-2-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,018,983.

THE ENGLISH TRANSLATION OF "BRIO" IS  
"VIGOR", "VIVACIOUS" OR "WITH VITALITY".

SER. NO. 76-603,870, FILED 7-23-2004.

JOHN LINCOSKI, EXAMINING ATTORNEY

Int. Cl. 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,191,292

Registered Jan. 2, 2007

SERVICE MARK  
PRINCIPAL REGISTER



BRAVO DEVELOPMENT, INC. (OHIO CORPORATION)  
18 N. MAIN STREET  
CHAGRIN FALLS, OH 44022

FOR: RESTAURANT SERVICES, IN CLASS 43  
(U.S. CLS. 100 AND 101).

FIRST USE 7-2-1999; IN COMMERCE 7-2-1999.

OWNER OF U.S. REG. NOS. 2,018,983 AND  
2,996,778.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "TUSCAN GRILLE", APART FROM  
THE MARK AS SHOWN.

THE MARK CONSISTS OF AN OVAL CONTAIN-  
ING THE UNDERLINED WORD BRIOS IN CAPITAL  
LETTERS PLACED DIRECTLY THE LOWER CASE  
WORDS TUSCAN GRILLE.

SER. NO. 78-605,918, FILED 4-11-2005.

ELLEN B. AWRICH, EXAMINING ATTORNEY

# **Exhibit F**

## JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114-1190  
TELEPHONE: (216) 586-3939 • FACSIMILE: (216) 579-0212

Direct Number: (216) 586-1247  
[tfaelich@jonesday.com](mailto:tfaelich@jonesday.com)

JP315436:clk  
180555-019008

April 25, 2008

### VIA OVERNIGHT DELIVERY

Mr. Paul Sandolo  
Owner  
Brio Mediterranean Restaurant  
353 North Bedford Road  
Mount Kisco, New York 10549

Mr. Daniel A. Rubino Jr.  
Chef  
Brio Mediterranean Restaurant  
353 North Bedford Road  
Mount Kisco, New York 10549

### Re: Infringement of Federally Registered BRIO Trademark

Dear Messrs. Sandolo and Rubino:

We represent, as outside trial counsel in intellectual property matters, including without limitation matters pertaining to trademark infringement and dilution, Bravo Development, Inc. (hereinafter "BDI"), 18 North Main Street, 3rd Floor, Chagrin Falls, Ohio 44022. BDI provides restaurant services in connection with the trademark BRIO. We recently learned that you are operating a restaurant that utilizes the BRIO trademark on 353 North Bedford Road in Mount Kisco, New York. Additionally, we are aware that you intend to expand and open another restaurant under this same name in Fishkill, New York. Further, we understand that you are utilizing the domain name [www.brioristorante.com](http://www.brioristorante.com) to advertise and market your restaurant services at these locations.

Be advised that the BRIO mark has been used in connection with restaurant services by BDI, or its predecessor in interest, since at least as early as 1995. Indeed, BDI is the owner of United States Trademark Registration No. 2,996,778 for the mark BRIO; Registration No. 2,018,983 for the mark BRIO & Design; and Registration No. 2,996,778 for the mark BRIO TUSCAN GRILLE. BDI uses its marks in connection with restaurant services throughout the United States. These marks have never been abandoned by BDI, nor have any rights been granted to your company to use it in any manner. Copies of BDI's marks are enclosed for your convenience.

ATI-2320258v2

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • HONG KONG • HOUSTON  
IRVINE • LONDON • LOS ANGELES • MADRID • MILAN • MOSCOW • MUNICH • NEW DELHI • NEW YORK • PARIS • PITTSBURGH  
SAN DIEGO • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

JONES DAY

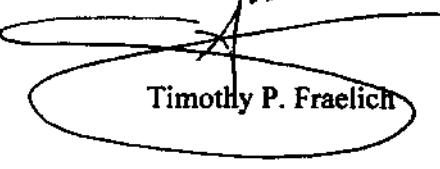
Messrs. Sandolo and Rubino  
April 25, 2008  
Page 2

Your use of the BRIO mark, or any similar mark in connection with providing restaurant services, violates, dilutes and infringes upon BDI's federal rights in and to its trademarks. Accordingly, we hereby demand that you transition to a different mark in connection with your restaurant services within thirty (30) days of the date of this letter.

A written statement of your agreement to cease using the BRIO mark should be set forth in a letter and forwarded to us, so as to reach our offices within ten (10) days of the date of this letter. Should you fail to do so, BDI will have no alternative but to pursue more aggressive measures to protect its rights in and to its BRIO trademark.

Should you have any questions regarding the foregoing, you may contact the undersigned.

Sincerely,



Timothy P. Fraelich

Enclosures

cc: Carrie L. Kiedrowski, Esq.  
Ms. Amy Gagich

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

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Registered Nov. 26, 1996

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PRINCIPAL REGISTER



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1112 WEST 6TH ST.  
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Registered Jan. 2, 2007

SERVICE MARK  
PRINCIPAL REGISTER



BRAVO DEVELOPMENT, INC. (OHIO CORPORATION)  
18 N. MAIN STREET  
CHAGRIN FALLS, OH 44022

FOR: RESTAURANT SERVICES, IN CLASS 43  
(U.S. CLS. 100 AND 101).

FIRST USE 7-2-1999; IN COMMERCE 7-2-1999.

OWNER OF U.S. REG. NOS. 2,018,983 AND  
2,996,778.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "TUSCAN GRILLE", APART FROM  
THE MARK AS SHOWN.

THE MARK CONSISTS OF AN OVAL CONTAIN-  
ING THE UNDERLINED WORD BRIO IN CAPITAL  
LETTERS PLACED DIRECTLY THE LOWER CASE  
WORDS TUSCAN GRILLE.

SER. NO. 78-605,918, FILED 4-11-2005.

ELLEN B. AWREICH, EXAMINING ATTORNEY

# **Exhibit G**


[Close Window](#)

Track Shipments/FedEx Kinko's Orders

[Print](#)
**Detailed Results**

<b>Tracking number</b>	790993305558	<b>Reference</b>	JP003742; 180555-019008
<b>Signed for by</b>	M.JENSEN	<b>Destination</b>	MOUNT KISCO, NY
<b>Ship date</b>	Apr 25, 2008	<b>Delivered to</b>	Receptionist/Front Desk
<b>Delivery date</b>	Apr 26, 2008 11:56 AM	<b>Service type</b>	Priority Envelope - Adult Signature Required
		<b>Weight</b>	0.5 lbs.
<b>Status</b>	Delivered		
<b>Signature image available</b>	Yes		

**Signature Proof of Delivery**

Click Request copy of signature to view delivery information for this shipment.

 Signature Image

[Request copy of signature](#)

Date/Time	Activity	Location	Details
Apr 26, 2008	11:56 AM Delivered 9:10 AM On FedEx vehicle for delivery 8:40 AM At local FedEx facility 7:04 AM At dest sort facility 4:56 AM Departed FedEx location	MOUNT KISCO, NY ELMSFORD, NY ELMSFORD, NY NEWBURGH, NY MEMPHIS, TN	
Apr 25, 2008	11:05 PM Arrived at FedEx location 10:17 PM Left origin 7:42 PM Picked up 3:40 PM Package data transmitted to FedEx	MEMPHIS, TN ATLANTA, GA ATLANTA, GA	

[E-mail results](#)
[Track more shipments/orders](#)

Subscribe to tracking updates (optional)

Your name:

Your e-mail address:

E-mail address	Language	Exception updates	Delivery updates
	English	<input type="checkbox"/>	<input type="checkbox"/>
	English	<input type="checkbox"/>	<input type="checkbox"/>
	English	<input type="checkbox"/>	<input type="checkbox"/>
	English	<input type="checkbox"/>	<input type="checkbox"/>

Select format:  HTML  Text  Wireless

Add personal message:

Not available for Wireless or non-English characters.



FedEx Express  
Customer Support Trace  
3875 Airways Boulevard  
Module H, 4th Floor  
Memphis, TN 38116

U.S. Mail: PO Box 727  
Memphis, TN 38194-4643  
Telephone: 901-369-3600

May 1, 2008

Dear Customer:

The following is the proof-of-delivery for tracking number 790993305558.

**Delivery Information:**

Status:	Delivered	Delivery location:	353 N BEDFORD RD MOUNT KISCO, NY 105491145
Signed for by:	M.JENSEN	Delivery date:	Apr 26, 2008 11:56
Service type:	Priority Envelope		

**Shipping Information:**

Tracking number:	790993305558	Ship date:	Apr 25, 2008
		Weight:	0.5 lbs.

**Recipient:**  
Paul Sandolo and Daniel Rubino, Jr.  
Brio Mediterranean Restaurant  
353 N BEDFORD RD  
MOUNT KISCO, NY 105491145 US

**Shipper:**  
Carrie Kiedrowski  
Jones Day  
1420 Peachtree Street, NE  
Suite 800  
Atlanta, GA 303093053 US  
JP003742; 180555-019008

**Reference**

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service  
1.800.GoFedEx 1.800.463.3339

# **Exhibit H**

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114-1190  
TELEPHONE: (216) 586-3939 • FACSIMILE: (216) 579-0212

Direct Number: (216) 586-1247  
tfraelich@jonesday.com

JP315436:clk  
180555-019008

May 12, 2008

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Paul Sandolo  
Owner  
Brio Mediterranean Restaurant  
353 North Bedford Road  
Mount Kisco, New York 10549

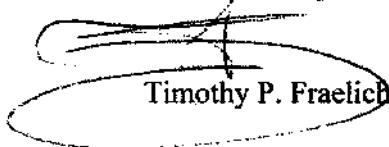
Mr. Daniel A. Rubino Jr.  
Chef  
Brio Mediterranean Restaurant  
353 North Bedford Road  
Mount Kisco, New York 10549

Re: Infringement of Federally Registered BRIO Trademark

Dear Messrs. Sandolo and Rubino:

In light of your failure to respond to my letter of April 25, 2008, which was received by your company on April 26, 2008, we have no choice than to pursue other remedies to protect our client's rights.

Sincerely,



Timothy P. Fraelich

cc: Carrie L. Kiedrowski, Esq.  
Ms. Amy Gagich

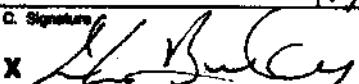
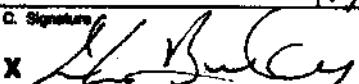
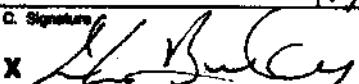
ATI-2323072v1

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • HONG KONG • HOUSTON  
IRVINE • LONDON • LOS ANGELES • MADRID • MILAN • MOSCOW • MUNICH • NEW DELHI • NEW YORK • PARIS • PITTSBURGH  
SAN DIEGO • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

# **Exhibit I**

<b>2. Article Number</b>	
 7160 3901 9845 2953 6411	
<b>3. Service Type</b> CERTIFIED MAIL	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
<b>1. Article Addressed to:</b>  Mr. Paul Sandolo, Owner Brio Mediterranean Restaurant 353 North Bedford Road Mount Kisco, New York 10549	
<b>A. Received by (Please Print Clearly)</b> <input type="text"/> <b>B. Date of Delivery</b> 07/08	
<b>C. Signature</b> 	
<b>D. Is delivery address different from Item 1?</b> If YES, enter delivery address below: <input type="checkbox"/> Agent <input type="checkbox"/> Addressee <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Reference Information</b>	
180555-019008/Brio	
Carrie Kiedrowski	

PS Form 3811, January 2005      Domestic Return Receipt

2. Article Number													
 7160 3901 9845 2953 6435													
3. Service Type CERTIFIED MAIL													
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes													
1. Article Addressed to:													
Mr. Daniel A. Rubino Jr., Chef Brio Mediterranean Restaurant 353 North Bedford Road Mount Kisco, New York 10549													
<table border="1"><tr><td>A. Received by (Please Print Clearly)</td><td>B. Date of Delivery</td></tr><tr><td colspan="2">7/16/08</td></tr><tr><td colspan="2">C. Signature</td></tr><tr><td colspan="2"></td></tr><tr><td colspan="2">D. Is delivery address different from item 1? If YES, enter delivery address below:</td></tr><tr><td colspan="2"><input type="checkbox"/> Agent    <input type="checkbox"/> Addressee <input type="checkbox"/> Yes    <input type="checkbox"/> No</td></tr></table>		A. Received by (Please Print Clearly)	B. Date of Delivery	7/16/08		C. Signature				D. Is delivery address different from item 1? If YES, enter delivery address below:		<input type="checkbox"/> Agent <input type="checkbox"/> Addressee <input type="checkbox"/> Yes <input type="checkbox"/> No	
A. Received by (Please Print Clearly)	B. Date of Delivery												
7/16/08													
C. Signature													
													
D. Is delivery address different from item 1? If YES, enter delivery address below:													
<input type="checkbox"/> Agent <input type="checkbox"/> Addressee <input type="checkbox"/> Yes <input type="checkbox"/> No													
Reference Information													
180555-019008/Brio													
Carrie Kiedrowski													